83-712

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

No.

STATE OF NEW JERSEY,

Petitioner,

-v-

T.L.O.,

Respondent.

ON PETITION FOR A WRIT OF
CERTIORARI TO THE
SUPREME COURT OF NEW JERSEY

RESPONDENT'S BRIEF IN OPPOSITION

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

No.

STATE OF NEW JERSEY,

Petitioner

-v-

T.L.O.,

Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of
New Jersey

RESPONDENT'S BRIEF IN OPPOSITION

The respondent, T.L.O., respectfully requests that this Court deny the petition for a writ of certiorari, seeking review of the decision of the Supreme Court of New Jersey rendered in this case on August 8, 1983.

OPINIONS BELOW

The opinion of the Supreme Court of New Jersey is reported as State in the Interest of T.L.O., 94 N.J. 331, 463 A.2d 934 (1983). The decision of the Appellate Division of the Superior Court is published at 185 N.J. Super. 279, 448 A.2d 493 (App. Div. 1982) The opinion of the trial court is reported at 178 N.J. Super. 329, 428 A.2d 1327 (J.D.R.C. 1980).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

New Jersey Constitution of 1947, Article I, paragraph 7.

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.

New Jersey Constitution of 1947, Article VIII, section 4, paragraph 1.

> The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.

N.J.S.A. 2A:4-60.

> All defenses available to an adult charged with a crime, offense or violation shall be available to a juvenile charged with committing an act of delinquency . . . The right to be secure from unreasonable searches and seizures . . . shall be applicable in cases arising under this act as in cases of persons charged with crime.

N.J.S.A. 18A:25-2.

> A teacher or other person in authority over such pupil shall hold every pupil accountable for disorderly conduct in school and during recess and on the playgrounds of the school and on the way to and from school . . .

N.J.S.A. 18A:37-1.

> Pupils in the public schools shall comply with the rules established in pursuance of law for the government of such schools, pursue the prescribed course of study and submit to the authority of the teachers and others in authority over them.

N.J.S.A. 18A:6-1

No person employed or engaged in a school or educational institution, whether public or private, shall inflict or cause to be inflicted corporal punishment upon a pupil attending such school or institution; but any such person may, within the scope of his employment, use and apply such amounts of force as is reasonable and necessary: (1) to quell a disturbance, threatening physical injury to others; (2) to obtain possession of weapons or other dangerous objects upon the person or within the control or a pupil; (3) for the purpose of self-defense; and (4) for the protection of persons or property; and such acts, or any of them, shall not be construed to constitute corporal punishment within the meaning and intendment of this section...

N.J.S.A. 18A:37-2(j)

. . . Conduct which shall constitute good cause for suspension or expulsion of a pupil guilty of such conduct shall include . . .

j. Knowing possession or knowing consumption without legal authority of alcoholic beverages or controlled dangerous substances on school premises, or being under the influence of intoxicating liquor or controlled dangerous substances while on school premises.

STATEMENT OF THE CASE

On March 7, 1980, a search was made by Theodore Choplik, Vice Principal of Piscataway High School, of a purse belonging to T.L.O., then a student at the school. Ms. Lenore Chen, a mathematics instructor had made a routine check of the girls' restroom. She observed T.L.O. and another girl smoking tobacco cigarettes. (TS 20-7 to 25) Although smoking by students was permitted in certain designated areas, it was not allowed in the restrooms. (TS 33-20 to TS 34-6) Ms. Chen ordered both girls to accompany her to Mr. Choplik's office, where she advised him of the infraction. (TS 21-1 to TS 22-23).

Upon being questioned, T.L.O. denied that she smoked. (TS 27-1 to 21) Mr. Choplik then asked T.L.O. to give him her handbag because when "she said to me she wasn't smoking, all right, that was to me to see if there was any proof that she was . . . and so my intent was to see if there was cigarettes inside, which would be a sign to me that she was smoking." (TS 31-1 to 13) When T.L.O. complied, Mr. Choplik opened the purse and "there was a package of Marlboros sitting right on the top there." (TS 28-3 to 11) He removed the cigarettes, showed the package to T.L.O., and accused her of lying. (TS 28-12 to 18) As he reached in and removed the Marlboros, Mr. Choplik also observed cigarette rolling papers in the purse. He removed them, and asked T.L.O. "what she was doing with these." She denied that they were hers. (TS 28-21 to TS 29-5) Mr. Choplik explained that "from then on I went to see what else was in there because from my experiences that seems to be a sign that someone is smoking marijuana." (TS 29-7 to 9)

Looking further into the handbag, he found a metal pipe, some empty plastic bags, and one plastic bag containing tobacco or some similar substance.* (TS 29-10 to 16) He also found a

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* At trial it was stipulated that the bag contained 5.40 grams of marijuana. (T 12-17 to 25)

wallet containing "a lot of singles and change," and inside a compartment in the bag, two letters and an index card. (TS 36-7 to 10; TS 38-6 to 12; TS 40-20 to 22; TS 39-4 to TS 40-11). Mr. Choplik then called T.L.O.'s mother, and the police. (TS 41-8 to 10)

Mr. Choplik admitted that he did not tell T.L.O. at any time that she had a right to refuse to open her pocketbook. Her purse was closed when she gave it to him and he acknowledged that he could not see into it until after he opened it. (TS 47-14 to 25) He also agreed that at the time Ms. Chen initially accused T.L.O. of smoking, he had a sufficient basis to impose a sanction without need for further evidence. (TS 47-9 to 13)

The local police were summoned, and T.L.O. was subsequently taken to headquarters, accompanied by her mother. Upon arrival, Officer O'Gurkins advised the juvenile of her Miranda rights. (T 20-7 to T 21-3) When Mrs. O. indicated that she wanted to have an attorney present during questioning, she was permitted to telephone the office of Mr. Simon. (T 34-10 to 25) He was not there, so the officer was allowed to proceed with the interrogation. According to Mrs. O., her daughter at no time stated that she had sold marijuana. (T 35-15 to 22)

Officer O'Gurkins admitted that although it was standard practice in juvenile matters to reduce incriminating statements to writing, he did not follow this procedure with T.L.O. (T 24-12 to 18) He nevertheless maintained that T.L.O. had confessed that she had been selling marijuana in school for a week, charging $1.00 per "joint." (T 22-2 to 17) He conceded that T.L.O. explained to him that the $40.98, in singles and change, which was found in her purse, constituted the proceeds plus "tips" from her Courier-News paper route, which she had collected the night before. Officer O'Gurkins did not,

however, include this exculpatory information in his incident report. (T 23-12 to 18)

As a result of this incident, Middlesex County Complaint Number JD-1322-80 was filed charging the juvenile with possession of marijuana with intent to distribute. In addition, T.L.O. was suspended from school for seven days for possession of marijuana within school premises, and three days for smoking cigarettes in an area of the school where smoking was not permitted. See State in the Interest of T.L.O., 178 N.J. Super. 329, 428 A.2d 1327 (J.D.R.C. 1980)

A civil proceeding was brought by the juvenile in the Superior Court, Chancery Division against the Piscataway School Board to compel her reinstatment in school. Testimony was taken before the Honorable David Furman, J.S.C. on March 31, 1980. Judge Furman ruled that the search of the pocketbook was illegal and that the evidence found as a result could not be used against her. Accordingly he vacated the seven day suspension based upon the marijuana offense. (TC 26-1 to TC 27-22) The juvenile returned to school.

On September 26, 1980, a motion was brought before the Honorable George J. Nicola, J.J.D.R.C. to dismiss Complaint Number JD-1322-80 on the grounds that Judge Furman's decision on the legality of the search precluded further litigation of the matter. This motion was denied, the suppression question was relitigated, and the search was found by the Juvenile Court to be legal. State in the Interest of T.L.O., supra, 178 N.J. Super. at 342-45.

After a trial held on March 23, 1981, T.L.O. was found guilty of possession of marijuana with intent to distribute. On January 8, 1982, a probationary term of one year was imposed on the juvenile.

By letter dated February 9, 1982, T.L.O. was formally advised that she was suspended from school pending a formal hearing to expel her. The expulsion proceedings would be based

upon her having been adjudicated a delinquent for possession on March 7, 1980 of marijuana with intent to distribute.

A Notice of Appeal from the adjudication of delinquency was filed with the Appellate Division on February 11, 1982.

On February 10, 1982, a Notice of Motion to stay the adjudications of delinquency and to compel the school board to allow the juvenile to attend school during the pendency of the appeal was filed with the Middlesex County Juvenile and Domestic Relations Court, and ultimately granted by the Appellate Division on February 25, 1982. The juvenile was thereupon allowed to return to school.

The appeal was decided on June 30, 1982. State in the Interest of T.L.O., 185 N.J. Super. 279, 448 A.2d 493 (App. Div. 1982).

Judges Milmed and Gaulkin affirmed the denial of the motion to suppress the evidence secured by the search of the juvenile's purse, adopting the reasons set forth in the opinion of the trial court. However, they found that "neither the record nor the findings and conclusion of the trial judge are sufficient for us to determine the sufficiency of the Miranda waiver which was assertedly made by or on behalf of the juvenile immediately before her resumed questioning by the police officer." Id., at 448 A.2d 493. They therefore vacated the adjudication of deliquency and ordered a remand to the trial court "for further proceedings and findings and conclusions in light of the principles encunciated in Edwards v. Arizona, ___U.S.___, 68 L.Ed. 2d. 378 (1981) and State v. Fussell, 174 N.J. Super. 14 (App. Div. 1980)." Id.

Judge Joelson dissented, indicating that he would reverse the denial of the motion to suppress the evidence found in T.L.O.'s purse. Id. at 495.

A Notice of Appeal was filed with the New Jersey Supreme Court on July 16, 1982. Because the appeal was based upon the dissenting opinion, the only issue before the court was the legality of the search.

The companion case of State v. Engerud was certified directly to the Supreme Court, unheard in the Appellate Division. State v. Engerud, 93 N.J. 308, 460 A.2d 701 (1983) Argument was heard in both cases on May 10, 1983.

On August 8, 1983, the State Supreme Court rendered its judgment in both matters. Due to the death of defendant Jeffrey Engerud shortly thereafter, the prosecutor now petitions for a writ of certiorari only from the decision in State in the Interest of T.L.O.

REASONS FOR DENYING THE WRIT

POINT I

THE DECISION OF THE NEW JERSEY SUPREME COURT WAS SUPPORTED BY INDEPENDENT AND ADEQUATE STATE GROUNDS.

Because it lacks jurisdiction to render advisory opinions, this Court has historically and consistently refused to review decisions which rest upon adequate and independent state grounds. Michigan v. Long, ---U.S.---, 103 S. Ct. 3469, 3475-76 (1983); Fox Film Corporation v. Muller, 296 U.S. 207, 210, 56 S.Ct. 183, 80 L.Ed. 158 (1935). Respondent submits that the opinion of the New Jersey Supreme Court in State in the Interest of T.L.O., 94 N.J. 331, 463 A.2d 934 (1983) is based upon such grounds, and that accordingly, the State's petition for a writ of certiorari should be denied.

It has long been settled that where the judgment of a state court rests upon two grounds, one of which is federal and the other nonfederal in character, the jurisdiction of the United States Supreme Court fails if the nonfederal ground is independent of the federal, and is adequate to support the judgment. Fox Film Corporation v. Muller, supra, 56 S.Ct. at 184; Klinger v. Missouri, 13 Wall. 257, 263, 20 L.Ed. 635 (1872) The basis for this rule was set forth at length in Herb v. Pitcairn, 324 U.S. 117, 125-26, 65 S.Ct. 459, 89 L.Ed. 789 (1945):

> Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion.

The decision as to whether an asserted non-federal ground independently and adequately supports a judgment is the

prerogative of this Court. Olive State Bank v. Bryan, 282 U.S. 765, 773, 51 S.Ct. 252, 75 L.Ed. 690 (1931). Moreover, as is clear from the recently decided Michigan v. Long, supra, the sufficiency and the independence of the state ground must be apparent from the "four corners of the opinion." Id., 103 S.Ct. at 3475.

In the instant matter, a review of the opinion below leads inescapably to the conclusion that the outcome rests upon sufficient state grounds, independent of and unaffected by federal constitutional considerations. First, it is clear that the decision below rests substantially on a local law which has no counterpart in the Federal Constitution. As the petitioner has correctly noted, this Court has never expressly decided the question of whether and to what extent juveniles are entitled to be free of unreasonable searches and seizures as set forth in the Fourth Amendment. In the New Jersey Code of Juvenile Justice, however, the Legislature has enacted a provision which guarantees to juveniles the same right to be secure from unreasonable searches and seizures as would be accorded to adults. N.J.S.A. 2A:4-60. This provision was expressly relied upon by the New Jersey Supreme Court. See State in the Interest of T.L.O., supra, 463 A.2d at 939, n. 5. Thus, should this Court decide that the Fourth Amendment applies only to adults, or that as petitioner urges, its protections apply to juveniles only in some attenuated form this aspect of the New Jersey Court's decision would remain unaffected; the New Jersey Court would still be required by the local statute to give juveniles parity with adults in this respect.

In addition, the T.L.O. decision is explicitly founded upon state constitutional grounds which accord New Jersey citizens rights and protections beyond that afforded by the Federal Constitution. At the very outset, the New Jersey Supreme Court noted that, "Young people and students are persons by the

United States and New Jersey Constitutions." (Emphasis supplied) State in the Interest of T.L.O., supra, at 938. Thus the court clearly signalled that the decision would have its roots in state as well as federal constitutional principles. In support of this proposition, the New Jersey Court compared N.J.S.A. 18A:6-1, which bans corporal punishment in New Jersey schools, with Ingraham v. Wright, 430 U.S. 651, 51 L.Ed.2d 711 (1977), in which reasonable corporal punishment of students is found not to violate the Eighth Amendment of the Federal Constitution. State in the Interest of T.L.O., supra at 938. The clear import of this comparison is to demonstrate that under New Jersey law, young people and students can be given greater protections than would be mandated by the Federal Constitution.

The court went on to state as one basis for its decision "the obligation of school officials to furnish a thorough and efficient education," (State in the Interest of T.L.O., supra, at 943), a clear reference to Article VIII, section 4, paragraph 1 of the New Jersey Constitution (1947).* This constitutional provision guarantees to New Jersey children between the ages of five and eighteen certain educational rights; it has no counterpart in the Federal Constitution. Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973), cert. den. sub nom Dickey v. Robinson, 414 U.S. 976, 94 S.Ct. 292, 38 L.Ed.2d 219 (1973). See also State v. Hunt, 91 N.J. 338, 450 A.2d 952, 955 (1982). Moreover, the New Jersey Supreme Court does not merely pay lip service to this constitutional provision (as was the case in Michigan v. Long, supra, at 3477), but in the opinion evaluates the entire

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* Article VIII, section 4, paragraph 1 states:

> The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children of the state between the ages of five and eighteen years.

legislative scheme enacted to implement a thorough and efficient education before deciding the extent to which school students can be subjected to a search:

> The Legislature has specifically charged school officials to maintain order, safety and discipline. The statutes give them authority to prevent disorderly conduct by pupils, N.J.S.A. 18A:25-2, and students are required to submit to such authority, N.J.S.A. 18A:37-1. Specifically, school officials have power to suspend pupils for illegal possession or consumption of drugs and alcohol, N.J.S.A. 18A:37-2(j), for assaulting teachers, N.J.S.A. 18A:37-2.1, or for other good cause. See N.J.S.A. 18A:37-2, -4. Other statutes allow them to deal specifically with pupils who are under the influence of drugs or alcohol, N.J.S.A. 18A:40-4.1 (principal should notify parent); N.J.S.A. 18A:35-4a (board of education shall establish policies and procedures for evaluating and treating alcohol users). Finally, N.J.S.A. 18A:6-1 grants specific power to seize weapons or other dangerous items and to quell disturbances.
>
> Taken together, these statutes yield the proposition that school officials, within the school setting, have the authority to conduct reasonable searches necessary to maintain safety, order and discipline within the schools. State in the Interest of T.L.O., supra at 940.
>
> * * *
>
> We are satisfied that the Legislative scheme for public education in New Jersey contemplates a narrow band of administrative searches to achieve educational purposes. Id.

Since the educational guarantees of Article VIII, section 4, paragraph 1 have no corollary in the Federal Constitution, the New Jersey Court's reliance upon this ground is surely independent of any federal constitutional considerations. Moreover, in construing the constitutional mandate of a "thorough and efficient" education and its statutory implements, the New Jersey Court has a wholly sufficient basis to rule that school children can not be harassed by official searches except under certain narrowly limited circumstances.

Additionally, the T.L.O. decision is also rooted in Article

I, paragraph 7 of the New Jersey Constitution (1947).* Although this provision is similar in wording to the Fourth Amendment, it has been repeatedly and specifically construed to guarantee more expansive protections. See e.g. State v. Alston, 88 N.J. 211, 440 A.2d 1311, 1319 (1981) (finding that under the State Constitution a person's ownership of or possessory interest in property confers standing for search and seizure purposes, despite the Rakas line of federal decisions); State v. Johnson, 68 N.J. 349, 346 A.2d 66, 67-68 (1975) (holding that under the State Constitution, if the prosecution wants to assert that a search was made pursuant to consent, the state has the burden of showing that defendant knew he could refuse); State v. Hunt, supra (requiring that under the State Constitution a warrant must be obtained to secure an individual's billing records from the telephone company, despite the decision in Smith v. Maryland, 442 U.S. 735, 99 S.Ct. 2577, 61 L.Ed.2d 220 (1979) that a telephone user has no Fourth Amendment expectation of privacy in phone company records.)

In deciding that a school official need not apply for a warrant, the New Jersey court did quote from Mincy v. Arizona, 437 U.S. 385, 390, 98 S.Ct. 2408, 51 L.Ed.2d 290 (1978), to the effect that a few narrow exceptions exist to the general rule requiring warrants. Id. at 939. However, two New Jersey cases were also cited in support of this proposition: State v. Patino and State v. Bruzzese. State in the Interest of T.L.O., supra. Both of these cases specifically rely upon Article I, paragraph 7 of the State Constitution. See State v. Patino, 83

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* This provision reads as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particulars describing the place to be searched and the papers and things to be seized.

N.J. 1, 7 414 A.2d 1327, 1330 (1980); State v. Bruzzese, 94 N.J. 210, 463 A.2d 320, 323 (1983). In concluding that a warrant is not necessary because the school setting is akin to the "pervasively regulated business", the court again refers to federal cases, but it also relies upon In re Martin, 90 N.J. 295, 447 A.2d 1290, 1297 (1982), State v. Dolce, 178 N.J. Super. 275, 283, 428 A.2d 947, 952 (App. Div. 1981), and State v. Williams, 84 N.J. 217, 225, 417 A2d 1046, 1050 (1980), cases based in part upon state constitutional or statutory grounds. State in the Interest of T.L.O., supra at 939-40.

With regard to the standard by which the legality of school searches must be evaluated, the New Jersey Court reviewed cases from both federal and other state jurisdictions, before choosing to adopt the "reasonable grounds to believe" standard espoused by the majority of cases. State in the Interest of T.L.O., supra at 940-41. While the New Jersey Court refers to several Fourth Amendment decisions, it also relies on In re Martin, supra, a case involving the question of the reasonableness of an administrative search of gambling casinos, decided pursuant to both the Federal and State Constitutions. State in the Interest of T.L.O., supra at 941. Similarly, in determining whether an exclusionary rule should be applied in the context of a search by an official other than a police officer, the New Jersey Court looked to the long-settled principles exemplified by such federal cases as See v. Seattle, 387 U.S. 541, 87 S.Ct. 1737, 18 L.Ed.2d 943 (1967); Camara v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967); and Michigan v. Tyler, 436 U.S. 499, 98 S.Ct. 1942, 56 L.Ed.2d 486 (1978), before answering in the affirmative. State in the Interest of T.L.O., supra at 939. This conclusion was, however, also specifically premised upon the New Jersey Code of Juvenile Justice. Id. at 939, n. 5.

Thus at each step of its legal analysis, the New Jersey

Court relied upon state as well as federal decisions.* Moreover, the mere presence of federal precedents in a state court opinion does not, in itself, compel the conclusion that the judgment was based upon federal grounds. A state court may choose to rely upon federal caselaw for guidance, in the same way that it might find opinions from the courts of sister states to be persuasive. Michigan v. Long, supra; Zacchini v. Scripps-Howard Broadcasting Co., 443 U.S. 562, 568, 97 S.Ct. 2849, 53 L.Ed.2d 965 (1977). Only if it appears that the state court felt bound and compelled by the constitutional considerations expressed in the federal decisions, and altered the application of its own law accordingly is the indpendence of the asserted state ground undermined. Id. While the New Jersey Supreme did utilize federal caselaw for guidance and reference, at no time in the opinion below did it express the view that it was bound by such precedents in construing its own law. Thus, it is clear from "the four corners of the opinion" that the decision is based upon adequate state grounds, and that this Court would be rendering an advisory opinion should a writ of certiorari be granted.

Moreover, contrary to the situation in Michigan v. Long, supra at 3478, n. 10, should this Court look to New Jersey case law beyond the scope of the T.L.O. opinion, it would be found that the Supreme Court of New Jersey has often construed the State Constitution to require greater rights and protections than have been held by this Court to be required by federal constitutional principles. See e.g. State v. Schmid, 84 N.J. 535, 423 A.2d 15 (1980) (ruling that the New Jersey "free speech" clause is more expansive that the First Amendment);

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* By contrast, one of the reasons stated in Michigan v. Long, supra for concluding that the decision did not rest upon independent state grounds was the fact that the Michigan Supreme Court did not cite "a single state case" in support. Id. at 3477.

State v. Bellucci, 81 N.J. 531, 310 A.2d 666 (1979) (giving the state constitutional right to effective assistance of counsel more expansive protection than found in the Federal Constitution.) Thus, even a cursory review of New Jersey case law reveals an extensive and bona fide pattern of reliance upon the State Constitution for greater protections than mandated by federal law.

For these reasons, respondent maintains that the decision below is based upon adequate and independent state grounds.

POINT II

THE DECISION OF THE NEW JERSEY SUPREME COURT WAS IN ACCORDANCE WITH FEDERAL CONSTITUTIONAL LAW.

Petitioner contends that a writ of certiorari should issue because the New Jersey Supreme Court erroneously concluded that the Fourth Amendment exclusionary rule applies to evidence obtained as a result of the search of a student by a school administrator. As discussed at length in Point I, supra, respondent maintains that the decision below is based upon independent and adequate state grounds. However even assuming, arguendo, that such were not the case, it is clear that the opinion in State in the Interest of T.L.O., supra, is entirely in accordance with federal constitutional principles. Respondent therefore maintains that since the matter was correctly decided by the New Jersey Supreme Court, the State's petition for a writ of certiorari should be denied.

The petitioner specifically argues that evidence obtained as a result of a school search should not be suppressed because this Court's "Fourth Amendment exclusionary rule mandates have related exclusively to searches conducted by police officials." (Petition for Certiorari at 5) This contention is patently erroneous. It has long been settled that the Fourth Amendment gives protection against unlawful searches and seizures, and that this protection applies not merely against the police, but against any action by governmental agencies. Burdeau v. McDowell, 256 U.S. 465, 475, 41 S.Ct. 574, 65 L.Ed. 1048 (1921).

As this Court more recently stated in Michigan v. Tyler. 436 U.S. 499, 504-05, 98 S.Ct. 1942, 56 L.Ed.2d 486 (1978),

> The decisions of this Court firmly establish that the Fourth Amendment extends beyond the paradigmatic entry into a private dwelling by a law enforcement officer in search of the fruits or instrumentalities of crime. As this Court stated in Camara v. Municipal Court, 387 U.S. 523, 528, 18 L.Ed.2d 930, 87 S.Ct. 1727, the "basic purpose of this Amendment . . . is to

> safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." The officials may be health, fire, or building inspectors. Their purpose may be to locate and abate a suspected public nuisance, or simply to perform a routine periodic inspection. The privacy that is invaded may be sheltered by the walls of a warehouse or other commercial establishment not open to the public. See v. Seattle, 387 U.S. 541, 18 L.Ed.2d 943, 87 S.Ct. 1737, Marshall v. Barlow's Inc., ante at 311-313, 56 L.Ed.2d 305, 98 S.Ct. 1816. These deviations from the typical police search are thus clearly within the protection of the Fourth Amendment.

Thus, the protections of the Fourth Amendment exclusionary rule have been specifically held to apply to such non-police governmental officials as building inspectors (Camara v. Municipal Court, supra), firemen (Michigan v. Tyler, supra), occupational safety inspectors (Marshall v. Barlow's, Inc., 436 U.S. 307, 98 S.Ct. 1816, 56 L.Ed.2d 305 (1978)).

Indeed the decision in Burdeau v. McDowell, supra, mistakenly relied upon by the petitioner in support of this argument, at no time limits itself to law enforcement officers; the Court refers to searches by "governmental agencies," "official(s) of the federal government," and "sovereign authority." Id. at 475. The search held to be outside the ambit of the Fourth Amendment in that matter was conducted by the defendant's employer, i.e. a private citizen. Id.

This Court has on numerous occasions found teachers and school administrators to be governmental agents for constitutional purposes. See e.g. Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975); Tinker v. Des Moines, etc. School District, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 7231 (1969); West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943).

As this Court held in Barnette, supra, at 63 S.Ct. 1185:

> "The Fourteenth Amendment, as now applied to the states, protects the

> citizen against the State itself and all of its creatures -- Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights."

Similarly, in Tinker, supra, at 89 S.Ct. 739, this Court ruled:

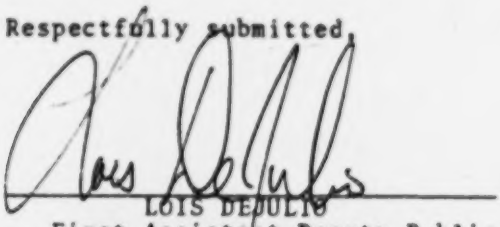
> "In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State."

Thus, the decisions of this Court compel the conclusion that school administrators are governmental officials rather than private citizens for federal constitutional purposes. The New Jersey Supreme Court's ruling suppressing evidence discovered as a result of an illegal search by a high school principal was entirely in accord with Forth Amendment considerations.

CONCLUSION

For these reasons, it is respectfully urged that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,



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IN THE

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October Term 1983

No. 83-7124

THE STATE OF NEW JERSEY, Petitioner,

v.

T.L.O., Respondent.

The Respondent, T.L.O., asks leave to file the attached Brief in Opposition to a Petition for a Writ of Certiorari to the Superior Court of New Jersey, Appellate Division without prepayment of costs, and to proceed in forma pauperis pursuant to Rule 46.

The Respondent's affidavit in support of this motion is attached hereto.

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T.L.O., Respondent.

AFFIDAVIT

I, Terry L. Owens, of full age, being duly sworn according to law, depose and say in support of my motion for leave to proceed without being required to prepay costs or fees:

1. I am the Respondent in the above-entitled case.

2. Although I was a juvenile at the commencement of this matter, I became eighteen years of age on April 24, 1983.

3. Because of my poverty, I am unable to pay the costs of said cause.

4. I am unable to give security for the same.

5. I believe that I am entitled to the redress I seek in said case.

6. I graduated from high school in June of 1983. Although I am actively seeking work, I am not presently employed.

7. Over the past twelve months, I have earned $990. from part-time employment while attending school.

8. I do not own any cash or checking or savings accounts.

9. I do not own any real estate, stocks, bonds, notes, automobiles or other valuable property.

10. I was represented on appeal in the New Jersey Courts by the Office of the Public Defender. I qualified as being an indigent person under their standards.

11. I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Terry Owens
TERRY L. OWENS

Sworn and subscribed to
before me on this 1st
day of NOVEMBER, 1983

[illegible]
My Commission Expires 11-7-85